

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

TYRONE ALLEN, Petitioner

V.

NO. 2:94CV86-B-O

EDWARD HARGETT, ET AL, Respondents

O P I N I O N

Petitioner, Tyrone Allen, an inmate at the Mississippi State Penitentiary, files this petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 seeking to have a conviction in 1980 set aside.

Petitioner entered a plea of guilty to shoplifting on June 12, 1980, in the Circuit Court of Bolivar County, Mississippi. The court accepted the plea, and sentenced petitioner to two years confinement.

At some subsequent time petitioner was convicted in the state court of Mississippi of another criminal offense. The June 12, 1980, conviction was used to sentence petitioner as a habitual offender and increase the length of his sentence.

Petitioner contends that the shoplifting conviction in 1980 should be set aside as an involuntary plea because the trial judge did not explain, before the guilty plea was accepted by the court, that the consequences of the plea would be a conviction

subject to use against petitioner in future enhancement proceedings. He further asserts, that, since the plea was involuntary, its use in the subsequent trial was improper. Therefore, the sentence in the trial on the second offense was unlawfully enhanced and would have already expired at the present time. Consequently, he should be immediately released from confinement.

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

Rule 3.03 of the Mississippi Uniform Criminal Rules of Circuit Court Practice, adopted August 15, 1979, provide in relevant part:

(2) **Voluntariness.** Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception or improper inducements. A showing that the pleas of guilty was voluntary and intelligently made must appear in the record.

(3) **Advice to the Defendant.** When the defendant is arraigned and wishes to plead guilty to the offense charged, it is the duty of the trial court to address the defendant personally and to inquire and determine:

A. That the accused is competent to understand the nature of the charge against him;

B. That the accused understands the nature and consequences of his plea, and the maximum and minimum penalties provided by law;

C. That the accused understands that by pleading guilty he waives his constitutional rights of trial by jury, the right to confront and cross-examine adverse witnesses, the right against self-incrimination;

D. If the accused is not represented by counsel, that he is aware of his right to counsel at every stage of the proceeding and that one will be appointed to represent him if he is indigent.

There is no showing whatsoever that petitioner's guilty plea was not in accord with these mandates. The court is not required to somehow see into the future and warn a defendant about every possible consequence of a criminal conviction. Where a defendant's guilty plea is both counseled and voluntary, there is a presumption that his plea was constitutionally adequate. U.S. v. Winfield, 960 F.2d 970 (11th Cir. 1992).

A failure of a trial court to apprise the defendant of the possibility that his guilty plea and conviction might be used to enhance a subsequent conviction is nothing more than a refusal to anticipate a defendant's recidivism. United States v. Woods, 870 F.2d 285, 288 (5th Cir. 1989). Therefore, it "is not the type of consequence about which a defendant must be advised before entering a guilty plea." Id.

Therefore, considering the allegations contained in the petition, since no arguable factual or legal basis for a claim of constitutional dimension exists for the wrongs asserted therein entitling him to the relief sought, it is the opinion of this court that this petition be dismissed for failure to state a claim upon which relief can be granted.

A final judgment in accordance with this opinion will be entered.

THIS the _____ day of _____, 1994.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT COURT JUDGE